

RESOLUTION NO. 97-101

A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING AGREEMENT WITH EMPLOYMENT SYSTEMS, INC.
TO PROVIDE STAFFING SERVICES TO THE CITY OF LODI, AND
APPOINTING ALICE M. REIMCHE TO THE POSITION OF
CITY CLERK EFFECTIVE JULY 16, 1997

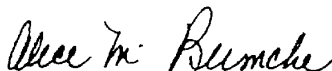
BE IT RESOLVED, that the Lodi City Council hereby approves the agreement with Employment Systems, Inc., to provide staffing services to the City of Lodi; and

BE IT FURTHER RESOLVED, that the appointment of Alice M. Reimche to the position of City Clerk for the City of Lodi is hereby approved, to be effective July 16, 1997.

Dated: July 16, 1997

I hereby certify that Resolution No. 97-101 was passed and adopted by the City Council of the City of Lodi in a regular meeting held July 16, 1997, by the following vote:

AYES:	COUNCIL MEMBERS -	Land, Mann, Sieglock, Warner and Pennino (Mayor)
NOES:	COUNCIL MEMBERS -	None
ABSENT:	COUNCIL MEMBERS -	None
ABSTAIN:	COUNCIL MEMBERS -	None


ALICE M. REIMCHE
Acting City Clerk

**EMPLOYMENT SYSTEMS, INC.
AGREEMENT TO PROVIDE STAFFING SERVICES TO
THE CITY OF LODI**

THIS AGREEMENT is made and entered into this 11th day of July, 1997, by and between the City of LODI, CA, hereinafter referred to as "CITY", and EMPLOYMENT SYSTEMS, INC., hereinafter referred to as "ESI".

WHEREAS, ESI is a California corporation which provides the services of its employees to government agencies for the purpose of discharging the responsibilities of government agencies; and

WHEREAS, CITY has engaged the personal services of certain persons as its employees; and

WHEREAS, economic reasons exist which make it in the best interests of CITY to discharge certain of its responsibilities through the use of ESI employees;

NOW, THEREFORE, in consideration of the promises, covenants, and warranties hereinafter set forth, the parties hereto mutually agree as follows:

**ARTICLE 1
DEFINITIONS**

All terms used in this Agreement shall have the customary meaning afforded such terms unless the same are used in a technical or business context, in which event such terms shall have the technical and/or special meaning normally afforded such terms within the particular trade, industry, or business to which they relate. The following are the definitions of special terms used herein:

1.1 "Current Payroll" means the payroll set forth on attached Exhibit A and incorporated by this reference.

1.2 "Employees" means those individual persons who are subject to the terms of this Agreement and who are identified on attached Exhibit A incorporated by this reference.

1.3 "Employee Tax Forms" means all forms applicable to the payroll which are required by United States, state, and local governments to be provided by an employer to an employee, including U.S. Department of the Treasury, Internal Revenue Service Form W-2 (Wage and Tax Statement) and Form W-4 (Employee's Withholding Allowable Certificate) and Form 1099 (as and if applicable), as well as comparable and/or counterpart forms prescribed by the state and/or local government in which employees are performing services pursuant to this Agreement.

1.4 "Employer Tax Forms" means all forms required to fully and properly report the payroll to the United States, state and/or local governments, including United States Department of the Treasury, Internal Revenue Service Form 941 (Employer's Quarterly Federal Tax Return for Federal Income Tax Withheld from Wages and for Federal Insurance Contributions Act Taxes), Form 940 (Employer's Annual Federal Unemployment Tax Return), and comparable and/or counterpart forms prescribed by the state and/or local government in which employees are performing services pursuant to this Agreement.

1.5 "Payment Due Date" means any date on or before the last day of each payroll period.

1.6 "Pay Period" means the interval between payments to employees specified in attached Exhibit A.

1.7 "Payroll" means the total payroll applicable to all employees and includes the aggregate of net compensation to employees, federal withholding taxes, state and local (if any) withholding taxes, employer and employee costs pursuant to the Federal Insurance Contributions Act, employer costs pursuant to the Federal Unemployment Tax Act, employer costs for state unemployment taxes (if any), employer costs pursuant to the Voluntary Compensation Plan (if any), and employer listed service fees (as applicable).

ARTICLE 2 IMPLEMENTATION

2.1 Relationship of Parties. Effective at the commencement of business on the _____th day of _____, 1997, ESI will provide to CITY those of its employees who are identified on attached Exhibit A and CITY hereby accepts such employees on the terms and conditions provided in this Agreement.

2.2 Term of Agreement. This Agreement and the rights and obligations of CITY and ESI shall commence on the effective time and date specified in paragraph 2.1 and shall continue until terminated. This agreement may be terminated by either party for the default of the other party upon ten (10) days prior written notice. After this agreement has been in effect for one year, this agreement may be terminated by either party with or without cause upon thirty (30) days prior written notice. In the event of termination by CITY, ESI shall be paid for all periods prior to the effective date of termination.

2.3 Specification of Services and Approval of Compensation. CITY shall specify, and by notice to ESI may accept, modify, or reject the services and/or rate of compensation of any and all employees leased to CITY in accordance with this Agreement. In the event of rejection of services and/or rejection of the rate of compensation of any employee leased to CITY, the lease made by this Agreement shall terminate as to such employee, effective upon receipt by ESI of notice thereof. For purposes of business and financial accounting between the parties, this Agreement shall be deemed several as to each employee and shall be deemed prorated on a daily or other periodic basis necessary to give effect to the manifest intentions of the contracting parties.

2.4 Changes and Adjustments in Payroll. CITY and ESI acknowledge the payroll will vary from pay period to pay period by reason of additions, terminations, and changes in compensation rates of employees. It is further acknowledged that the payroll also may vary from pay period to pay period by reason of changes in the rate and/or amount of employee withholding and/or employer payroll contributions and/or costs of employee benefit plans and programs. It is specifically agreed that the amount of all payments coming due and owing from CITY to ESI shall be adjusted (by increase or decrease, as applicable) to the extent necessary to directly reflect such changes on a current basis. All such changes and adjustments in payroll are hereby expressly approved by the parties.

2.5 Employer Duties of ESI. ESI shall (1) pay all wages and other remuneration to its employees who are subject to this Agreement; (2) notify CITY of the current payroll prior to each pay period; (3) prepare and file all payroll tax returns and reports; (4) pay all amounts due and owing pursuant to the payroll tax returns and reports which are prepared and filed; (5) prepare, file, and furnish to employees applicable employee tax forms; and (6) prepare and file, with a copy to CITY, applicable employer tax forms. In the event of termination of any employee as provided by paragraph 2.4, ESI shall provide placement assistance to that employee by listing that employee at no charge to the employee in ESI's job listing service.

2.6 Duties of CITY. CITY shall (1) provide the workplace for all employees subject to this Agreement; (2) maintain the workplace in strict accordance with applicable health and working standards and specifications; (3) comply with all safety engineering and governmental health and safety rules, regulations, directives, orders or similar requirements; (4) provide all required safety equipment; (5) for employees located in California, take all actions necessary to establish and implement an injury and illness prevention program as required by the Occupational Injury Program Act, also known as Senate Bill 198, and codified at California Labor Code §6401.7; (6) post or provide employee notices required by law; and (7) notify ESI immediately of all employee illnesses, accidents, injuries, and absences.

2.7 Workers' Compensation, Health, and Other Benefits. ESI maintains Workers' Compensation and Employers Liability Insurance of a form and in an amount as required by state law. Various health and other benefits are available to employees under a cafeteria plan which permits each employee to choose the type of benefits he or she will receive.

ARTICLE 3 COMPENSATION

3.1 Fee. CITY agrees to pay the hourly rate established in Exhibit A on or before each payment due date. This rate is based on current ESI costs and is subject to change when costs change due to factors which are beyond the control of ESI (such as insurance, payroll tax, etc.). Any adjustments made will be commensurate with increased costs to ESI.

3.2 Payment Address. All payments due ESI shall be paid to:

EMPLOYMENT SYSTEMS, INC.
11590 W. Bernardo Court, Suite 211
San Diego, California 92127

3.3 Terms of Compensation. Invoices are due within 15 days of receipt. Delinquent payments will be subject to a late payment carrying charge computed at a periodic rate of 1% per month, which is an annual percentage rate of 12%, which will be applied to any unpaid balance owed commencing seven (7) days after the payment due date. Additionally, in the event CITY fails to pay any undisputed amounts due ESI within forty-five (45) days after payment due date, then CITY agrees that ESI shall have the right to consider said default a total breach of this Agreement and the duties of ESI under this Agreement may be terminated by ESI without liability to ESI upon ten (10) working days advance written notice.

3.4 Additional Services. CITY may request ESI to perform additional services not covered by this Agreement, such as recruiting services, and ESI shall perform such additional services and will be paid for such additional services when they are mutually agreed to and made part of this Agreement by written amendment.

ARTICLE 4 SUPERVISION OF EMPLOYEES

CITY shall supervise the daily activities of employees. Employees shall discharge government responsibilities and perform in accordance with the ordinances, resolutions, rules, regulations, and procedures adopted by CITY. ESI shall have no control over such government responsibilities and such ordinances, resolutions, rules, regulations, and procedures.

ARTICLE 5 INDEMNIFICATION

ESI shall indemnify, defend, and hold harmless CITY for the purposes of all required payroll deductions and withholdings, legally required workers' compensation insurance, and health benefits of the employees. The employees are neither CITY employees nor firefighters, and ESI shall indemnify, defend, and hold harmless CITY for claims by the employees for inclusion in the California Public Employees Retirement System, claims by the employees for coverage under Labor Code Sec. 4850, or any other claims by the employees asserting the employees are CITY employees. However, inasmuch as the CITY shall supervise the daily activities of employees, and inasmuch as the employees will discharge government responsibilities and perform in accordance with the ordinances, resolutions, rules, regulations, and procedures adopted by CITY (1) ESI and its employees shall be entitled to all protection and immunities of government employees, including without limitation, those provided in California Government Code, Title 1, Division 3.6, Claims and Actions against Public Entities and Public Employees; and (2) CITY does release and agree to indemnify, defend and hold harmless the employees, ESI, and ESI's agents, personnel, directors, and officers from, any and all actions, claims, damages or injuries to persons or property, penalties, obligations or liabilities arising out of or related to the services performed under this Agreement.

In addition, the employees, ESI, and ESI's agents, personnel, directors, and officers shall be additional named insured on CITY's insurance policies or on any self-insurance agreement. If CITY is a member of a Risk Management Agreement (RMA) or similar agreement, CITY will notify the organization responsible for RMA or similar agreement in writing that the employees, ESI, and ESI's agents, personnel, directors, and officers do not have any applicable insurance coverage.

ARTICLE 6 GENERAL PROVISIONS

6.1 Representation. A CITY representative shall be designated by the CITY and a ESI representative shall be designated by ESI as the primary contact person for each party regarding performance of this Agreement. The following are the designated representatives:

Michelle Friery for ESI
Joanne Narloch for the City of LODI

6.2 Legal Action. Should either party to this Agreement bring legal action against the other, the case shall be handled within the County where CITY is located, and the party prevailing in such action shall be entitled to reasonable attorneys' fee which shall be fixed by the judge hearing the case and such fee shall be included in the judgment.

6.3 Assignment. This Agreement shall not be assignable by either party without the prior written consent of the other party.

6.4 Audit. CITY shall have the right to audit and inspect ESI records and accounts covering costs under this Agreement for a period of two years after termination of the Agreement.

6.5 Titles. The titles used in this Agreement are for general reference only and are not part of the Agreement.

6.6 Severability. Should any provision of this Agreement be determined to be unenforceable, such determination shall not affect the remaining provisions.

6.7 Extent of Agreement. This Agreement represents the entire and integrated Agreement between CITY and ESI and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified or amended only by a subsequent written agreement signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

EMPLOYMENT SYSTEMS, INC.

By: _____ Date: _____
Michelle C. Friery
Title: VICE PRESIDENT

THE CITY OF LODI

By: _____ Date: _____
Title: MAYOR

Attest: _____
Susan Seward Lake, Deputy City Clerk

Approved as to Form:

Randall A. Hays
Randall A. Hays, City Attorney

Exhibit A

Employee(s) included in this Agreement by and between the City of LODI and EMPLOYMENT SYSTEMS, INC., (is/are) listed below:

Employee 1: Alice Reimche (under the supervising direction of H. Dixon Flynn)

Total ESI payroll to Employee 1: \$ 2,210.58 bi weekly salary (\$57,475 annualized).ⁱ

Hourly Billing Rate to LODI for Employee 1: Payroll Costs - plus \$250.00 administrative fee per month per employee. See Exhibit A-1. If the employee waives the benefits, see exhibit A-2.

The billing rate for Employee 1 is based on all hours paid to this employee.

The benefits provided to this employee are:

Insurance:	Medical/Dental/AD&D/Life/Long Term Disability
Number of Vacation days:	<u>15 days</u>
Number of Administrative Leave days:	<u>10 days</u> ⁱⁱ
Number of Sick days:	<u>10 days</u>
Number of Holidays:	<u>12 ½ days</u>

New Year's Day, President's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Day after Thanksgiving, half day on Christmas Eve, Christmas Day, and four floating holidays.

* It is understood that (this/these) employee(s) will be driving a city vehicle for any field assignments. If the employee(s) use(s) a personal car on such assignments, billing to the City of LODI will be at the rate of \$.36/mile.

ⁱ If the employee decides to waive the insurance benefits (medical and dental), the employee's salary will be increased to \$2,307.70 bi weekly or \$60,000 annualized.

ⁱⁱ Treated as vacation time. Any unused hours will be paid out upon separation of employment.

Proposal to City of Lodi

For Contract Staffing of City Clerk

		<u>Annual</u>	<u>Annual</u>
Salary (per hour) or \$57,475 annualized		<u>Hours Worked</u>	<u>Compensation & Cost</u>
Regular hours	40 hours/week working a 9/80 schedule	1,700	\$46,975
Benefit Hours			
Vacation	15 days/year per employee	120	\$3,316
Administrative Leave	10 days/year per employee	80	\$2,211
Holiday	12.5 days/year per employee	100	\$2,763
Sick	10 days/year per employee	80	\$2,211
Total Hours (per employee)		2,080	
Total Annual Compensation Per Employee			\$57,475
Payroll Taxes and Workers Compensation			
	<u>Rate</u>	<u>Subject Wages</u>	
FICA (wages up to 65,400 per employee)	6.20%	57,475	\$3,563
Medicare	1.45%	57,475	\$833
SUI (wages up to 7,000 per employee)	5.10%	7,000	\$357
FUTA (wages up to 7,000 per employee)	0.80%	7,000	\$56
Workers Compensation (excluding OT premium)	1.29%	57,475	\$741
Classification Code (8810)			
Group Insurance			
Long term disability (Standard .51% of wages)	0.51%	12	\$293
Employee Medical Insurance (Prudential HMO)	123.76	12	\$1,485
Employee Dental Insurance (Prudential DMO)	23.80	12	\$286
Life and AD&D (Guarantee Life .18 per 1000/month)	0.18	12	\$124
ESI Administrative charges			
\$250.00 per month/per employee	\$250.00	12	\$3,000
Estimated Annual Cost To Agency Per Employee			\$68,214

Proposal to City of Lodi For Contract Staffing of City Clerk

		<u>Annual</u>	<u>Annual</u>
Salary (per hour) or \$60,000 annualized		Hours Worked	Compensation & Cost
	\$28.85		
Regular hours	40 hours/week working a 9/80 schedule	1,700	\$49,038
Benefit Hours			
Vacation	15 days/year per employee	120	\$3,462
Administrative Leave	10 days/year per employee	80	\$2,308
Holiday	12.5 days/year per employee	100	\$2,885
Sick	10 days/year per employee	80	\$2,308
Total Hours (per employee)		2,080	
Total Annual Compensation Per Employee			\$60,000
Payroll Taxes and Workers Compensation			
	<u>Rate</u>	<u>Subject Wages</u>	
FICA (wages up to 65,400 per employee)	6.20%	60,000	\$3,720
Medicare	1.45%	60,000	\$870
SUI (wages up to 7,000 per employee)	5.10%	7,000	\$357
FUTA (wages up to 7,000 per employee)	0.80%	7,000	\$56
Workers Compensation (excluding OT premium)	1.29%	60,000	\$774
Classification Code (8810)			
Group Insurance			
Long term disability (Standard .51% of wages)	0.51%	12	\$306
Employee Medical Insurance (Prudential HMO)	123.76	0	\$0
Employee Dental Insurance (Prudential DMO)	23.80	0	\$0
Life and AD&D (Guarantee Life .18 per 1000/month)	0.18	12	\$130
ESI Administrative charges			
\$250.00 per month/per employee	\$250.00	12	\$3,000
Estimated Annual Cost To Agency Per Employee			\$69,213